Supreme Court, U.S.
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No. 97-731

In the Supreme Court of the United States

OCTOBER TERM, 1997

UNITED STATES OF AMERICA, PETITIONER

v.

CHRIS W. BEGGERLY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTIONS PRESENTED

1. Whether an "independent action" brought against the United States to set aside a consent judgment entered in a previous quiet title action brought by the United States may be premised on "ancillary jurisdiction" deriving from the original quiet title action, and does not require an independent jurisdictional basis including a waiver of sovereign immunity.

2. Whether the 12-year statute of limitations applicable to actions against the United States brought under the Quiet Title Act, 28 U.S.C. 2409a(g), is subject to equitable tolling.

3. Whether the court of appeals had appellate jurisdiction to review the district court's denial of respondents' motion for summary judgment.

4. Whether the court of appeals erred in reopening the consent judgment and upholding respondents' claim of title to lands in the State of Mississippi based on a 1781 land grant by a Spanish governor who, as this Court held in *United States* v. *Power's Heirs*, 52 U.S. (11 How.) 570 (1851), had no authority to make such a grant.

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OPINIONS BELOW

The court of appeals' opinion rendered on rehearing (Pet. App. 1a-16a) is reported at 114 F.3d 484; its initial decision (Pet. App. 17a-31a) is unreported. The district court's order granting the government's motion to dismiss and denying respondents' motion for summary judgment (Pet. App. 32a-44a) is unreported, as is its order denying reconsideration (Pet. App. 47a-51a).

JURISDICTION

The court of appeals entered its initial judgment and decision on May 29, 1997. On July 28, 1997, the court of appeals issued a new decision and also denied a petition for rehearing. Pet. App. 52a-53a. The petition for a writ of certiorari was filed on October 27, 1997 (a Monday), and was granted on January 9, 1998. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS AND RULE INVOLVED

Reprinted in an appendix to this brief (App., *infra*, 1a-3a) are the pertinent provisions of 28 U.S.C. 1291, 28 U.S.C. 2409a, and Federal Rule of Civil Procedure 60(b).

STATEMENT

1. a. This case arises out of a dispute between respondents and the United States over ownership of lands on Horn Island, Mississippi, a barrier island on the coast of the Gulf of Mexico. Horn Island fell within the territory originally claimed by France as part of its province of Louisiana, which extended along the coast to the present boundary between Alabama and Florida. Under the Treaty of Paris of 1763, France ceded Louisiana east of the Mississippi to Britain and the rest of Louisiana (along with New Orleans) to Spain, and Horn Island then became part of the British province of West Florida. After Spanish military forces conquered the area in 1780-1781, the British ceded West and East Florida, including Horn Island, to Spain in the Treaty of Versailles of 1783. Spain returned part of West Florida, including Horn Island, to France under the 1800 Treaty of San Ildefonso. The United States acquired sovereignty over the area including Horn Island in the Louisiana Purchase of 1803.[1]

After the Louisiana Purchase, Congress established a commission to ascertain the titles and claims to lands east of the Pearl River in Mississippi, west of the Perdido River in Alabama, and south of the 31st degree of north latitude, an area that includes Horn Island. Act of Apr. 25, 1812, ch. 67, 2 Stat. 713. The 1812 Act required every

[1] See *United States* v. *Louisiana*, 363 U.S. 1, 80-81 (1960); *United States* v. *Power's Heirs*, 52 U.S. (11 How.) 570, 577-578 (1851); *Garcia* v. *Lee*, 37 U.S. (12 Pet.) 511 (1838); *Foster* v. *Neilson*, 27 U.S. (2 Pet.) 253, 299-302 (1829), overruled in part on other grounds, *United States* v. *Percheman*, 32 U.S. (7 Pet.) 51 (1833).

person claiming lands in that area under foreign grants to deliver evidence of the claim to the Commissioner, who was directed to examine the claims and to prepare a report on their validity for Congress. §§ 5, 7, 8; 2 Stat. 715, 716. In 1819, Congress confirmed the claims that were reported to be valid by Commissioner William Crawford, and directed the issuance of certificates and patents for the confirmed claims. Act of Mar. 3, 1819, ch. 100, §§ 1-2, 3 Stat. 528-530. No claims for lands on Horn Island were recommended by Commissioner Crawford or confirmed by Congress. To the contrary, in 1816, Crawford specifically rejected a claim to Horn Island by the heirs of "C[atalina] B[o]udreau" (variously spelled). See p. 6, *infra*.[2] In 1844, Congress permitted persons with claims to lands east of the Pearl River "which might have been perfected into a complete title" under a prior sovereign's laws to file suit in federal district court to substantiate such claims, with a right of direct appeal to this Court. Act of June 17, 1844, ch. 95, 5 Stat. 676; Act of May 26, 1824, ch. 173, § 1, 4 Stat. 52.[3] Neither party to this case has suggested that any lands on Horn Island were so claimed.

[2] Congress twice permitted persons whose claims had not been recommended for confirmation by the Commissioner to present additional supporting evidence (Act of Mar. 3, 1819, ch. 100, §§ 6-7, 3 Stat. 530-531; Act of May 24, 1828, ch. 93, 4 Stat. 299), and it subsequently confirmed several such claims (Act of May 8, 1822, ch. 128, 3 Stat. 707; Act of May 28, 1830, ch. 146, 4 Stat. 408). We are unaware of any claims recommended or confirmed for lands on Horn Island under those proceedings.

[3] The 1844 Act extended, to lands east of the Pearl River in Mississippi, provisions of an earlier act that had allowed those claiming lands in Arkansas and Missouri to petition the district court for recognition of their claims. See Act of May 26, 1824, ch. 173, 4 Stat. 52. Section 5 of the 1824 Act, and by incorporation the 1844 Act as well, provided that "any claim to lands * * * within the purview of this act, which shall not be brought by petition before the said courts, within two years from the passing of this act, * * * shall be forever

Since the early 1800s, the United States has openly acted as owner of Horn Island by conducting official government surveys of the Island. Such surveys are conducted only to establish the extent of publicly owned lands. See 43 U.S.C. 2, 52. An official plat survey for Horn Island was conducted in 1824, as were an official dependent resurvey conducted in 1846, a supplemental plat survey in 1907, and dependent resurveys in 1928 and 1979. J.A. 79-80.[4] In addition, since the mid-1800s, the President and Secretary of the Interior have issued a series of Executive Orders and Public Land Orders providing for the public use of lands at issue here and other lands on Horn Island, including use for military and lighthouse purposes, a chemical warfare station, a Coast Guard target range, and a wildlife refuge.[5]

b. Respondents' predecessor in interest, Clark Beggerly, Sr., purchased color of title to the lands at issue here, as well as other lands, by quitclaim deed at a delinquent tax sale offered by Jackson County, Mississippi, in 1950. Mr. Beggerly, Sr., paid $51.20 for 626 acres described as located on Horn Island; he and a friend also paid $31.25

barred, both at law and equity, and no other action, at common law, or proceeding in equity, shall ever thereafter be sustained in any court whatever, in relation to said claims." 4 Stat. 54.

[4] The resurvey conducted in 1928 reflected significant accretions and accordingly redesignated the lot numbers within the sections. Apparently, the new lot numbers were entered on the Bureau of Land Management tract books but not on county land records. That discrepancy explains why the government and respondents have, on occasion, referred to the disputed land by different lot numbers. See J.A. 11-12, 41-43, 60-61, 74, 79-80.

[5] See J.A. 80-81; Exec. Order of Aug. 30, 1847; Exec. Order of July 7, 1852; Exec. Order of Sept. 3, 1900; Exec. Order of Apr. 12, 1906; Exec. Order No. 4262 (July 3, 1925); Exec. Order No. 5562 (Feb. 20, 1931); Exec. Order No. 10,355, 17 Fed. Reg. 4831 (1952); Public Land Order No. 1636, 23 Fed. Reg. 3388 (1958).

for another 225 acres on the Island, of which he retained 103 acres upon later division. Pet. App. 32a-33a.

In 1971, Congress created the Gulf Islands National Seashore (GINS) consisting of various islands (including Horn Island) and mainland areas in Mississippi and Florida, 16 U.S.C. 459h, and authorized the Secretary of the Interior to acquire privately owned lands within the Seashore's boundaries. See 16 U.S.C. 459h-1. In 1972, the National Park Service began appraising lands within the boundaries of GINS, including some lands on Horn Island, as an initial step toward acquisition of properties. The 626-acre parcel claimed to be owned by respondents was appraised for $156,000, and the 103-acre parcel was appraised for $27,125. The Park Service offered respondents slightly larger amounts than those appraised values for the lands they claimed, conditioned on their delivery of clear title to the parcels. The government's title contractor, however, found no evidence that the United States had ever issued any patents for the property claimed by respondents. In the absence of clear title, the government did not further pursue purchase of the property from respondents. J.A. 75.[6]

[6] Respondents at one point maintained that their title derived from federal patents that had been issued to Indians in 1840 and recorded in the 1950s in the Jackson County Chancery Clerk's Office by an attorney acting for the 1950 tax-sale purchasers. Preliminary research by the government's title contractor suggested that respondents' title was derived from three patents issued to Indians in 1840, but subsequent research revealed that those Indian patents had in fact been issued for different lands in northeastern Mississippi, and that no patents had ever been issued for Horn Island. The confusion was apparently due to the fact that the Indian patents were issued for lands with similar range, township, section, and lot numbers, but within the Chickasaw or Choctaw Meridian in northeastern Mississippi, not the St. Stephens Meridian, where Horn Island is located. J.A. 41-42, 75; Piehl Dec. ¶ 2e; Fakkema Dec. ¶ 2g; see R. Minnick, *Public-Land Surveys*, in *The*

In 1979, the United States filed suit against respondents and almost 200 other defendants to quiet title in the United States to lands claimed by private persons on Horn Island, Petit Bois Island, and Ship Island. *United States of America* v. *Adams, et al.*, Civil Action No. 579-0338(C) (D. Miss.). For three years, the parties conducted research and discovery on their claims. During that litigation, the United States filed a pleading, in which it noted that a volume in the *American State Papers* containing the abstract of Commissioner Crawford's report to Congress on land claims east of the Pearl River referred to a claim, apparently to Horn Island, that was rejected by the Commissioner. See Memorandum in Support of Plaintiff's Opposition to Admission of Defendants' Exhibits 5-6 (filed 11/19/82); 3 *American State Papers, Public Lands* 7 *et seq.* (1834).[7] Crawford's report identified a claim by the "Heirs of C. Baudreau" to a grant purportedly issued on August 1, 1781, by Bernardo de Galvez, then the Governor of the Spanish province of Louisiana. *Id.* at 15, item 51. Crawford's report also explained that he had rejected the Boudreaus' and several other claims either because they were "forfeited—most of them under the Spanish law, for the want of inhabitation and cultivation; and do not appear to be entitled to confirmation under any law of the United States" (*id.* at 17); or because they were "derived from officers who had no right to grant, or, at most, not on so extensive a scale" (*ibid.*). In 1851, this Court held, in addressing claims to lands on two islands neighboring Horn

Surveying Handbook 970 fig. 28-5 (R. Brinker & R. Minnick eds., 1987); U.S. Dep't of the Interior, *Manual of Instructions for the Survey of the Public Lands of the United States* 60-61 (1973).

[7] We have lodged copies of this pleading with the Clerk. At a deposition in the *Adams* case, a government witness testified that government researchers had examined the original abstract of Crawford's report in the National Archives. J.A. 224.

Island, that, on August 1, 1781, Galvez had no legal authority to issue grants for lands east of the Pearl River. *United States* v. *Power's Heirs*, 52 U.S. (11 How.) 570, 579-580 (1851).[8]

In December 1982, respondents and the other defendants to the *Adams* litigation executed a settlement agreement in which they agreed to accept $400,000 as "full and just compensation and in full satisfaction of any and all claims of whatsoever nature * * * against the United States of America by reason of the settlement of the action," in return for entry of an attached consent judgment. Pet. App. 56a-58a. That consent judgment quieted title "in favor of the United States with regard to all lands and interests in lands on Horn and Petit Bois Islands which defendants have or may have claimed." *Id.* at 54a. The judgment also permanently enjoined the defendants (including respondents herein) from asserting any adverse claim to the property. *Id.* at 55a. As a result of the settlement, respondents received $208,175.87 of the $400,000 paid by the United States. J.A. 52-53.

c. Despite the settlement of the quiet title action, respondents continued to investigate their claim to the tax sale parcels. According to an affidavit later filed in this case, Edith Axelson, a researcher hired by respondents, stated that in 1991 she had located in the National

[8] Horn Island became part of the British province of West Florida after the 1763 Treaty of Paris. In 1781, Spain and Great Britain were at war, and the British forces surrendered West Florida to Galvez on May 9, 1781. The Court concluded in *Power's Heirs* that, although Spain held the relevant lands under military occupation on August 1, 1781, Spanish law had not been introduced into West Florida and Galvez had not been given civil power to grant lands there. Galvez was then the Governor of the Spanish province of Louisiana, but the Court held that his civil authority did not extend to West Florida. 52 U.S. (11 How.) at 579-580.

Archives documents relating to the "Boudreau Grant." J.A. 96. Axelson attached to her affidavit a copy of materials assertedly documenting an August 1, 1781, grant of Horn Island to Catalina Boudreau by Bernardo de Galvez. Those documents purport to state that, upon a petition by Boudreau's son, Galvez referred Boudreau's request for Horn Island to the Spanish military commander at Mobile, Enrique Grimarest, who subsequently referred the matter back to Galvez for action, and that Galvez then issued a grant. J.A. 98-105.

Respondents hired Hans Baade, a law professor at the University of Texas, to evaluate the legal validity of the Boudreau Grant, and Baade gave respondents a legal opinion that the grant was valid. See J.A. 117-185. Baade, however, made no reference to this Court's holding in *Power's Heirs*, 52 U.S. (11 How.) at 579-580, that Galvez had lacked legal authority to issue grants to lands east of the Pearl River on August 1, 1781. Nor did he address the existence of any chain of title between Boudreau and respondents.

2. On June 1, 1994, respondents filed a complaint in district court, requesting that the court set aside the 1982 settlement agreement and the consent judgment in *Adams*, and award them just compensation for an "inverse condemnation" effected by entry of that 1982 consent judgment. See J.A. 9-27. The complaint alleged that the district court had jurisdiction under 28 U.S.C. 1331, and also based on the court's "ancillary jurisdiction" derived from the *Adams* litigation. J.A. 9-10. Relying on the "Boudreau Grant," the complaint asserted that the United States had fraudulently represented federal ownership of the disputed property on Horn Island (J.A. 23-24); that "mutual mistake of a material fact" had caused respondents to agree to the 1982 settlement (J.A. 25); and that the entry of the 1982 consent judgment constituted a taking of

respondents' property without just compensation entitling them to a monetary award by way of inverse condemnation (J.A. 25-26). As relief, respondents sought to have the court set aside the judgment in *Adams* and award them "damages" of not less than $14,500 per acre, plus interest since 1982. J.A. 26.

In January 1995, the United States moved to dismiss the case, contending that there was no statutory basis for jurisdiction, including no waiver of sovereign immunity, for respondents' action to set aside the judgment in *Adams*. In March 1995, respondents filed a motion for summary judgment, in which they contended that the court had jurisdiction over this case as an "independent action" to set aside the consent judgment in *Adams*, based on its jurisdiction in *Adams*. J.A. 56; [Respondents'] Memorandum in Support of Motion for Summary Judgment 5, 16, 20-21. In addition, respondents argued (*id.* at 23-24) that both the Quiet Title Act (QTA), 28 U.S.C. 2409a, and the Tucker Act, 28 U.S.C. 1346(a)(2) and 1491(a)(1), provided the district court with jurisdiction over their claims. In July 1995, respondents sought leave to amend their complaint to add the QTA and the Tucker Act as jurisdictional bases, but they did not seek to amend the relief sought in the complaint; in particular, they did not request that the district court quiet title to the Horn Island lands in *them*. See J.A. 238-240.

The district court granted the government's motion to dismiss and denied respondents' motion for summary judgment. Pet. App. 32a-44a. The court first observed that respondents' complaint was filed nearly 12 years after entry of judgment in *Adams*, well after the one-year period allowed by Federal Rule of Civil Procedure 60(b) for motions to set aside a final judgment based on mistake or fraud. *Id.* at 39a-41a. As for respondents' attempt to characterize their suit as an "independent action in equity,"

the court rejected that basis for relief as "substantively and procedurally deficient," and further concluded that the action was untimely under the equitable doctrine of laches. *Id.* at 40a-41a n.13.

The court also pointed out that a party seeking to set aside a judgment on the basis of fraud faces a "stiff standard of proof," and stated that respondents had "wholly failed to discuss [their] allegations of fraud in specific terms of the[] critical elements" of such a claim. Pet. App. 38a-39a n.9; see also *id.* at 39a-40a n.12 (court's "careful[] review[] [of] the record" establishes that respondents' "allegations are devoid of sufficient evidentiary support"). The court explained that the record "yielded little or no evidence * * * of fraud, mutual mistake, and so forth," and it concluded that "[t]he United States acted in good faith in the settlement of [the *Adams* litigation]." *Id.* at 43a. The court remarked that the United States "could have refused to pay for what it already owned"—noting that respondents' own attorneys had advised them at the time that they had no valid claim to the disputed lands—and it characterized the amount respondents had accepted in the *Adams* settlement as a "six-figure windfall." *Id.* at 43a-44a. The court also dismissed the Tucker Act claim as lying within the exclusive jurisdiction of the Court of Federal Claims. *Id.* at 42a-43a. Having ruled that the case should be dismissed for lack of jurisdiction, the court then denied respondents' motion for summary judgment. *Id.* at 44a.

3. A divided panel of the court of appeals reversed. Pet. App. 1a-16a. The court first concluded that the district court had erred in dismissing the complaint. According to the court, the time limits in Rule 60(b) for setting aside a judgment based on alleged fraud "do[] not 'limit the power of a court to entertain an independent action'" to set aside a judgment. Pet. App. 4a. The court also ruled that "an

independent action filed in the same court that rendered the original judgment is a continuation of the original action for purposes of subject matter jurisdiction." *Id.* at 4a-5a. Therefore, the court concluded, neither an independent basis for jurisdiction nor a waiver of sovereign immunity is required "to bring an independent action in the same court as the original action." *Id.* at 5a.

The court then addressed the merits of respondents' "independent action," and it ordered that the consent judgment in *Adams* be set aside. Pet. App. 5a-9a. "Crucial to that determination," the court stated, was its conclusion that the district court had erred in failing to recognize the validity of Galvez's 1781 grant of Horn Island to Boudreau. *Id.* at 6a. The court acknowledged that, in 1816, Commissioner Crawford had rejected the claim by Boudreau's heirs to Horn Island, but, it observed, Crawford was not given authority to adjudicate title but was required to submit claims to Congress for final action; therefore, Crawford's "refusal to accept the [Boudreaus'] application did not conclusively determine that Horn Island belonged to the United States." *Id.* at 6a-7a. But rather than remand the issue of the validity of the Boudreau Grant to the district court (which had not passed on the question), the court of appeals itself addressed the issue, and concluded —based on Professor Baade's affidavit offered by respondents in support of their motion for summary judgment (which the district court had denied)—that "the Boudreau Grant vested complete and valid title in Catarina Boudreau. On that record, therefore, we must conclude that the property at issue herein remained privately owned after the Louisiana Purchase and did not enter the

public domain of the United States" until the settlement of the quiet title action. *Id.* at 8a.[9]

Finally, the court ruled on what it called respondents' "Quiet Title Act claim" (Pet. App. 9a-11a). Even though respondents had only raised the QTA as an alternative basis for jurisdiction for their request for damages and vacatur of the consent judgment, and had not requested that the district court quiet title *in them*, the court read respondents' complaint as stating "alternative causes of action" and held that the district court had jurisdiction to adjudicate title under the QTA. *Id.* at 9a. Moreover, according to the court, since "the United States has no legitimate claim to the land, the validity of [respondents'] title is a legal certainty," and so title should be quieted in their favor. *Ibid.* The court did not address the United States' open ownership of Horn Island since the Louisiana Purchase, or the absence of any showing by respondents of a chain of title between Boudreau and the 1950 tax sale by which Clark Beggerly, Sr., acquired color of title to the land.

The court rejected the government's argument that any action by respondents under the QTA to adjudicate title in lands on Horn Island was barred by the statute of limita-

[9] The court stated that respondents' "involuntary settlement" of the *Adams* case, based on their "inability to prove their title" derived from the Boudreau Grant, was "directly caused by the government's failure to produce the grant and its misrepresentation that no private disposal" of the lands had ever been made. Pet. App. 8a. The court did not address the fact that the government had brought the claim of Boudreau's heirs to Horn Island, and Commissioner Crawford's rejection of that claim, to the attention of the court in the *Adams* litigation. See p. 6, *supra*. The court also did not consider this Court's *Power's Heirs* decision—holding that Galvez lacked authority to make grants east of the Pearl River—which Professor Baade had not discussed in his affidavit, and which the parties had not addressed in their briefs on appeal.

tions, which requires that a quiet title action against the United States be brought within 12 years of the date on which the claim accrues (defined as the date on which the plaintiff or his predecessor in interest knows or should know of the United States' claim to the land). Pet. App. 9a-10a; see 28 U.S.C. 2409a(g). The court acknowledged that respondents had brought their action more than 12 years after they knew of the United States' claim to the Horn Island lands, but, it ruled, the QTA's statute of limitations should be tolled in this case "on equitable grounds." Pet. App. 10a. "On the record before us," the court stated, "the government may not benefit from the limitations period," in light of what it believed to be "the diligence displayed by [respondents] in seeking the truth and pursuing their rights, which resulted in their discovering a grant that apparently not even custodians of the public land records could or would locate." *Ibid.* Accordingly, the court tolled the QTA's limitation period for respondents' benefit and remanded the case to the district court to enter judgment quieting title in their favor, subject to the United States' election to retain the property and pay respondents just compensation for it. *Id.* at 10a-11a.

SUMMARY OF ARGUMENT

I. A. The court of appeals erred in ruling that the district court had authority to entertain this lawsuit as an "independent action" in equity brought to vacate the consent judgment entered in the prior quiet-title action brought by the United States, *United States* v. *Adams*. The Federal Rules of Civil Procedure make clear that relief from final judgment must be sought either by filing a motion under Rule 60(b) in the original litigation or by instituting an entirely new action, and that all other ancillary forms of relief from judgment, such as bills of review in equity, have been abolished. Because the time for filing

a Rule 60(b) motion in *Adams* had long elapsed, respondents' only potential recourse was to file a new action against the United States.

Such a lawsuit, however, could not go forward because of the absence of any statutory source of jurisdiction or waiver of sovereign immunity to authorize it. The district court could not exercise ancillary jurisdiction over this action based on its jurisdiction in *Adams*. Ancillary jurisdiction is limited to authority to adjudicate issues intertwined with those in the initial case—which authority terminated here when final judgment in *Adams* was entered—and authority to ensure complete execution of the judgment in the initial litigation—which authority is not at issue here because respondents seek to vacate, not vindicate, the *Adams* judgment. In the absence of any statutory source of authority for the district court to decide this action, that court properly dismissed the suit. A contrary rule would undermine the important principles of finality underlying Rule 60(b) and in the law generally, which are at their height in cases involving attempts to revive settled land disputes.

B. This lawsuit may not proceed under the Quiet Title Act (QTA). Respondents concededly filed this action after the lapse of the QTA's 12-year limitation period. The QTA's statute of limitations is not subject to equitable tolling based on respondents' allegations of government misconduct. The QTA's statute of limitations permits a plaintiff to bring suit against the United States within 12 years after he knew, or should have known, of the government's claim to the land at issue, and thus it already incorporates equitable considerations. Whereas government misconduct might delay the date when the plaintiff knew or should have known of the government's claim, and therefore when the plaintiff's claim accrued, it should not also provide a basis for equitable tolling of the limitation

period after that date. Furthermore, the facts of this case, as found by the district court, do not demonstrate any government misconduct warranting such tolling.

II. A. Even if the district court did have authority to entertain this case, the court of appeals erred in ordering that title be quieted in respondents. When the district court denied respondents' motion for summary judgment, it rejected their contention that they were entitled to judgment as a matter of law on their allegations of fraud and mistake in the *Adams* case. That denial of summary judgment was not subject to review in the court of appeals, for it was neither a final decision nor an appealable collateral order; nor did it affect the final judgment of dismissal entered by the district court. Once the court of appeals reversed that dismissal on jurisdictional grounds, there was nothing left for the higher court to review. And even if there are some circumstances in which a court of appeals may review a denial of summary judgment under its discretionary pendent appellate jurisdiction, this is not such a case, for there were numerous unresolved issues of fact and law that the district court had not addressed, which were not suited for decision in the first instance by the court of appeals. Thus, at a minimum, the court of appeals should have remanded the case.

B. The court of appeals' disposition of the case was also erroneous on the merits. Respondents are not entitled to quiet title because their claim is based on a purported land grant made by the Spanish Governor of Louisiana in 1781, who, this Court held in *United States* v. *Power's Heirs*, 52 U.S. (11 How.) 570 (1851), had no authority at that time to make such a grant because Spain in 1781 exercised only military occupying power over the area, not full sovereignty. Respondents have pointed to no special justification for this Court to overrule *Power's Heirs*. The policy of *stare decisis* is particularly weighty for decisions, such

as *Power's Heirs*, involving long-settled legal rules governing land titles. And the historical evidence put forward by respondents does not in any event suggest that, at the time in question, Spain exercised full sovereignty over Horn Island. Finally, even if *Power's Heirs* were not to be followed, the court of appeals' order quieting title in respondents was error because there remain numerous factual and legal obstacles to respondents' claim.

ARGUMENT

I. THE DISTRICT COURT PROPERLY DISMISSED RESPONDENTS' ACTION

In reversing the dismissal of this case, the court of appeals concluded that the district court had jurisdiction over respondents' "independent action" to set aside the 1982 consent judgment under its "ancillary jurisdiction," premised on the subject-matter jurisdiction for the original suit, and that there was no need for respondents to invoke an independent source of subject-matter jurisdiction and waiver of sovereign immunity for their suit against the United States. Pet. App. 4a-5a. The court also held that the district court had jurisdiction to adjudicate respondents' claim to titie under the Quiet Title Act. *Id.* at 9a. Both of those conclusions were in error.

A. The District Court Did Not Have Authority To Entertain Respondents' Action As An Independent Action In Equity

1. Analysis of the district court's authority to decide this case must begin with the recognition that respondents were unable to proceed under the conventional procedure for seeking relief from a judgment based on mistake, newly discovered evidence, or alleged fraud—namely, a motion for relief from judgment under Federal Rule of Civil Procedure 60(b). Clauses (1), (2), and (3) of

Rule 60(b) permit the district court to grant relief from judgment for reasons such as mistake, newly discovered evidence, and fraud, but only if the party seeking to avoid the effect of the judgment makes a motion for relief not more than one year after the judgment was entered. Respondents' action to set aside the *Adams* judgment was made almost 12 years after that judgment was entered, and so it was untimely under Rule 60(b)(1)-(3). See Pet. App. 39a-40a. Rule 60(b)(6) also permits the court, upon motion made "within a reasonable time," to grant relief based on "any other reason justifying relief from the operation of the judgment," but that provision could not avail respondents, for a motion under Rule 60(b)(6) may not be "premised on one of the grounds for relief enumerated in clauses (b)(1) through (b)(5)." *Liljeberg* v. *Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 (1988).

A motion under Rule 60(b) is the exclusive means by which a party may obtain relief from judgment in the original litigation in which the judgment was entered. When Rule 60(b) was amended in 1946, all other forms of relief from judgment that might be considered ancillary to the original action in which the judgment was rendered were abolished. As originally adopted in 1938, Rule 60(b) stated that it did not limit the power of the court "to entertain an action to relieve a party from a judgment, order, or proceeding." Fed. R. Civ. P. 60(b) (1938). There was uncertainty whether that clause had preserved the power of the district courts to entertain traditional ancillary forms of relief, such as common-law writs of audita querela and coram nobis and equitable bills of review, or whether it had saved only the power to entertain original and independent actions for relief from a judgment. See J.W. Moore & E. Rogers, *Federal Relief From Civil Judgments*, 55 Yale L.J. 623, 633-642 (1946); *Effect of Rule 60(b) on Other Methods of Relief From Judgment*, 4 Fed.

R. Serv. 942 (Callaghan) (1941); Fed. R. Civ. P. 60(b) Advisory Committee Note (1946).

To dispel that uncertainty, Rule 60(b) was amended in 1946 to expand the permissible bases for relief from judgment by motion,[10] and to make clear that the Rule's provision for motions for relief from judgment was exclusive of all other ancillary forms of relief. Based on the Advisory Committee's recommendation that "the rules should be complete in this respect and define the practice with respect to any existing rights or remedies to obtain relief from final judgments," the Rule was refashioned to provide that "[w]rits of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action." Rule 60(b). The Rule was also amended to state that it does not "limit the power of a court to entertain an *independent* action to relieve a party from a judgment." *Ibid.* (emphasis added). See Moore & Rogers, *supra*, 55 Yale L.J. at 692 ("The first saving clause is limited to independent actions; and the last sentence abolishes both the substance and procedure of the old ancillary remedies at common law and equity."). Thus, the Rule now prescribes that relief from judgment may be obtained only two ways—by a motion under the Rule itself, or by an "independent action." And "[i]f the right to make a motion is lost by the expiration of the time limits fixed in

[10] For example, before 1946, Rule 60(b) did not expressly provide for relief from judgment because of fraud or newly discovered evidence. Moore & Rogers, 55 Yale L.J. at 632, 686; see Advisory Committee Note.

these rules, the only other procedural remedy is by a new or independent action." Advisory Committee Note.[11]

The Federal Rules also did away with another form of ancillary relief from judgment that had been used in the 19th century, namely, a bill filed on the equity side of the court to enjoin the execution of a judgment entered on the law side of the same court, based on allegations that the judgment had been obtained through fraud.[12] That practice

[11] There is one important exception that is not at issue in this case. Rule 60(b) also does not "limit the power of the court * * * to set aside a judgment for fraud upon the court." A court has the inherent authority to vacate one of its judgments based on fraud perpetrated upon it, without regard to the time limits of Rule 60(b). See *Chambers* v. *NASCO, Inc.*, 501 U.S. 32, 44 (1991); *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U.S. 238 (1944); 12 J.W. Moore et al., *Moore's Federal Practice* § 60.21[4][a] (3d ed. 1997). Fraud upon the court, however, is limited to fraud "that affects the very integrity of the judicial process itself," *id.* § 60.81[1][b], at 60-226, involving grave perversions of justice such as bribery of a judge, jury tampering, and schemes to fabricate authorities cited to the court, *id.* § 60.21[4][a], at 60-52 to 60-53. See also *Wilson* v. *Johns-Manville Sales Corp.*, 873 F.2d 869, 872 (5th Cir.) ("[R]elief based on 'fraud upon the court' is reserved for only the most egregious misconduct, and requires a showing of 'an unconscionable plan or scheme which is designed to improperly influence the court in its decision.'"), cert. denied, 493 U.S. 977 (1989); cf. *Pacific R.R.* v. *Missouri Pac. Ry.*, 111 U.S. 505, 520 (1884) (upholding equitable authority to vacate judgment based on allegations that party's attorney had conspired with adversaries to obtain fraudulent judgment); *Dickey* v. *Turner*, 49 F.2d 998, 1000 (6th Cir. 1931) (recognizing court's power "to prevent its process from becoming an instrument of wrongdoing"). The district court in this case stated that there was no evidence to suggest fraud upon the court, see Pet. App. 40a-41a, and the court of appeals did not disturb that conclusion.

[12] See, *e.g.*, *Carey* v. *Houston & T.C. Ry.*, 161 U.S. 115, 127-131 (1896); *Johnson* v. *Christian*, 125 U.S. 642, 645 (1888); *Pacific R.R.* v. *Missouri Pac. Ry.*, 111 U.S. 505, 520 (1884); *Minnesota Co.* v. *St. Paul Co.*, 69 U.S. (2 Wall.) 609, 632-633 (1865); *Freeman* v. *Howe*, 65 U.S. (24

arose in chancery courts because common law courts had held that they had little or no power to grant a new trial because of fraud by a party, at least after the expiration of the term of court in which the judgment was rendered. See *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U.S. 238, 244 (1944); 4 J. Pomeroy, *A Treatise on Equity Jurisprudence* § 1365, at 986 (S. Symons ed., 5th ed. 1941). The courts considered those bills in equity to be supplemental or ancillary to the original action at law—at least when they were *not* brought against the government—and so in such circumstances, the courts did not require that the bills independently satisfy requirements of jurisdiction and venue, or that process be served as for an original complaint.[13]

The practice of filing a bill on the equity side to impeach a judgment at law became obsolete after the promulgation

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How.) 450, 459 (1861). Justice Story viewed a bill in equity to impeach a decree for fraud as "an original bill in the nature of a bill of review." J. Story, *Commentaries on Equity Pleadings* 400 (J. Gould ed., 10th ed. 1892). Bills in the nature of bills of review are abolished by Rule 60(b). See p. 18, *supra*.

[13] See *Carey*, 161 U.S. at 130 (diversity not required for proceeding on equitable bill); *Johnson*, 125 U.S. at 645 (same); *Pacific R.R.*, 111 U.S. at 522 (same); *Freeman*, 65 U.S. (24 How.) at 460 (same, *semble*); *Minnesota Co.*, 69 U.S. (2 Wall.) at 633 (new service of process not required). Nonetheless, bills in equity to restrain judgments at law could not be maintained against the United States in the absence of a waiver of sovereign immunity. *Hill* v. *United States*, 50 U.S. (9 How.) 385, 389 (1850); *United States* v. *McLemore*, 45 U.S. (4 How.) 286, 288 (1846); *Jones* v. *Watts*, 142 F.2d 575, 577 (5th Cir.), cert. denied, 323 U.S. 787 (1944); see also *Avery* v. *United States*, 79 U.S. (12 Wall.) 304, 307 (1871) (holding that, because "audita querela is a regular suit in which the parties may plead and take issue on the merits," it does not lie against the United States); *Zegura* v. *United States*, 104 F.2d 34, 35 (5th Cir.) (bill of review does not lie against United States absent its consent to suit), cert. denied, 308 U.S. 586 (1939).

of the Federal Rules, which merged the rules for law and equity, created a unified "civil action," provided that all applications to the court be made by motion, and eliminated terms of court. Fed. R. Civ. P. 1, 2, 7(b)(1), 77(a); see 28 U.S.C. 138; 4 J. Pomeroy, *supra*, § 1365, at 986 (noting that in most jurisdictions "[t]he original occasion for this special jurisdiction has disappeared" because "the courts of law have acquired, and constantly exercise, full powers to grant new trials," and "the special equitable jurisdiction with respect to this matter has become obsolete"). Thus, after the union of law and equity in the Federal Rules, a party may seek relief from judgment only (a) by filing a Rule 60(b) motion in the original action, or (b) by instituting a new action, if one lies.

2. An "independent action"—as the term indicates—is a new piece of litigation filed in district court as an original matter, seeking equitable relief from the effect of a prior judgment.[14] And, as with any original action filed against the government in district court, an "independent action" against the United States such as this one requires an independent statutory source of federal jurisdiction and a waiver of sovereign immunity. "Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute, * * * which is not to be expanded by judicial decree." *Kokkonen* v. *Guardian Life Ins. Co. of America*, 511 U.S. 375, 377

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[14] Because of the availability of the ancillary remedies discussed above, pp. 17-21, *supra*, truly independent actions were rare before the promulgation of the Federal Rules. The most notable examples were actions filed in federal court based on diversity to enjoin the enforcement of a state-court judgment. See *Johnson* v. *Waters*, 111 U.S. 640, 668 (1884); *Griffith* v. *Bank of New York*, 147 F.2d 899, 901 (2d Cir.), cert. denied, 325 U.S. 874 (1945); *McNeil* v. *McNeil*, 78 F. 834, 835-836 (C.C.N.D. Cal. 1897); see also *Toucey* v. *New York Life Ins. Co.*, 314 U.S. 118, 136 (1941) (discussing cases).

(1994). And of course the waiver of sovereign immunity must be unequivocally expressed in statutory text and must specifically embrace the remedy that the plaintiff seeks from the courts. *Lane* v. *Peña*, 116 S. Ct. 2092, 2096-2099 (1996).

Respondents cannot point to a statutory source of federal jurisdiction or waiver of sovereign immunity for this action. Jurisdiction in *Adams* was predicated on 28 U.S.C. 1345, which gives the district courts jurisdiction over suits brought by the United States as plaintiff. J.A. 41. Jurisdiction in this case, brought *against* the United States, cannot proceed on that basis. In particular, there is no proper basis in this case for the exercise of "ancillary jurisdiction" based on the *Adams* litigation, as the court of appeals mistakenly believed (Pet. App. 9a). As we have explained (pp. 18-21, *supra*), the Federal Rules abolished all forms of ancillary relief from judgment other than motions under Rule 60(b).

Nor do residual modern concepts of ancillary jurisdiction support district court jurisdiction in this case. This Court has explained that ancillary jurisdiction is limited to (a) the disposition by a single court of all factually interdependent claims, and (b) the exercise of a court's power to vindicate its authority and effectuate its decrees. See generally *Kokkonen*, 511 U.S. at 379-380. But "once judgment was entered in [*Adams*], the ability to resolve simultaneously factually intertwined issues vanished." *Peacock* v. *Thomas*, 516 U.S. 349, 355 (1996). And the relief sought by respondents in this case is not the *effectuation* of the consent judgment entered in *Adams*, but its vacatur. Ancillary jurisdiction "does not stretch so far." *Kokkonen*, 511 U.S. at 379; see *Peacock*, 516 U.S. at 357 (declining to extend ancillary jurisdiction beyond "attempts to execute, or to guarantee eventual executability of, a federal judgment").

Nor is there any other statutory source of authority for the courts to entertain respondents' "independent action."[15] Even if the general federal-question statute, 28 U.S.C. 1331, furnishes subject-matter jurisdiction, it does not assist respondents, for Section 1331 does not waive the United States' sovereign immunity. As the Court explained in *United States* v. *Nordic Village, Inc.*, 503 U.S. 30, 37-38 (1992), a "broad jurisdictional grant" that contains no specific reference to the sovereign is not sufficient to waive immunity and authorize a suit against the sovereign to go forward. In *Nordic Village*, the Court rejected the argument that 28 U.S.C. 1334, which grants the district courts exclusive jurisdiction over property involved in a bankruptcy matter, empowers the courts to compel the United States to return money to an estate in bankruptcy proceedings. So too here, there is no waiver of sovereign immunity that permits the district court to entertain an action brought against the United States to invalidate a consent judgment obtained by the government in prior litigation, as to which the time for seeking relief from judgment under Rule 60(b) has passed.

3. The court of appeals' decision would render Rule 60(b) largely irrelevant. Whereas Rule 60(b) imposes a strict one-year time limit for relief from judgments based on fraud and the like, under the court of appeals' ruling, a party could invoke the ancillary jurisdiction of the district court well outside that one-year period and seek to overturn a judgment based on allegations of fraud. The ruling therefore greatly undermines the value of finality of judg-

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[15] The Quiet Title Act (QTA) provides jurisdiction and waives sovereign immunity for certain actions against the United States involving claims to interests in land. See 28 U.S.C. 1346(f), 2409a. As explained below, however, respondents' attempt to invoke the QTA is barred by the statute of limitations. See pp. 25-29, *infra*.

ments reflected in Rule 60(b) and generally in the law. That consequence is particularly troublesome in the context of cases such as this one, involving title to real property. This Court has repeatedly observed that "[t]he policies advanced by the doctrine of res judicata perhaps are at their zenith in cases concerning real property, land and water." *Nevada* v. *United States*, 463 U.S. 110, 129 n.10 (1983). As the Court has explained:

> Where questions arise which affect titles to land it is of great importance to the public that when they are once decided they should no longer be considered open. Such decisions become rules of property, and many titles may be injuriously affected by their change. * * * [W]here courts vacillate and overrule their own decisions * * * affecting the title to real property, their decisions are retrospective and may affect titles purchased on the faith of their stability. Doubtful questions on subjects of this nature, when once decided, should be considered no longer doubtful or subject to change.

Minnesota Co. v. *National Co.*, 70 U.S. (3 Wall.) 332, 334 (1866); see also *Arizona* v. *California*, 460 U.S. 605, 620 (1983); *Leo Sheep Co.* v. *United States*, 440 U.S. 668, 687 (1979); *United States* v. *Title Ins. & Trust Co.*, 265 U.S. 472, 485-487 (1924); *United States* v. *California & Oregon Land Co.*, 192 U.S. 355, 358-359 (1904). The court of appeals therefore erred in concluding that the district court could exercise ancillary jurisdiction over this action.

B. The Statute Of Limitations Barred Respondents From Proceeding Under The Quiet Title Act, And That Limitation Period Was Not Subject to Equitable Tolling

The court of appeals did not merely conclude that the district court had jurisdiction to set aside the original judgment quieting title in the United States; it further directed the district court to quiet title *in respondents' favor* under the Quiet Title Act (QTA)—even though respondents' action was concededly filed more than 12 years after they knew of the United States' claim to the disputed lands, and was therefore outside the QTA's 12-year statute of limitations, 28 U.S.C. 2409a(g), and even though (as the district court ruled), respondents failed to move properly to amend their complaint to add a cause of action or prayer for relief based on the QTA, see p. 9, *supra*; Pet. App. 49a-50a n.1. The court of appeals held that the QTA's 12-year limitation period was subject to equitable tolling, and that the limitation should be tolled in this case. *Id.* at 10a. Those rulings were erroneous.

1. The QTA is the sole mechanism by which a party may bring the United States into court to force an adjudication of a title dispute involving land in which the United States claims an interest. See *Block* v. *North Dakota*, 461 U.S. 273, 275-276 (1983). The QTA is, moreover, addressed to an important aspect of the sovereignty of the United States, the ownership of property, which is subject to the plenary control of Congress. See U.S. Const. Art. IV, § 3, Cl. 2 (Congress has power "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States"); *United States* v. *City and County of San Francisco*, 310 U.S. 16, 29-30 (1940). Suits under the QTA therefore implicate the core of sovereign immunity. See

Dugan v. *Rank*, 372 U.S. 609, 620 (1963) (suit is against the sovereign if "the judgment sought would expend itself on the public treasury or domain"); cf. *Idaho* v. *Coeur d'Alene Tribe*, 117 S. Ct. 2028, 2040 (1997) (observing that Indian Tribe's suit against state officers was "the functional equivalent of a quiet title action which implicates special sovereignty interests").

Because of the special significance of publicly owned lands for the sovereignty of the United States, it is particularly important that title to those lands not be clouded or unsettled, beyond the permissible reach of title litigation that Congress has expressly authorized in the QTA itself. When Congress was considering proposals that led ultimately to enactment of the QTA, a concern was expressed that the United States would become subject to stale claims to publicly owned lands, as to which any defense would be difficult because of the passage of time. See *Block* v. *North Dakota*, 461 U.S. at 283. After close bargaining, Congress enacted an unusually generous 12-year statute of limitations, see *id.* at 283-284, but also "foreclose[d] totally any suit on claims that accrued more than 12 years prior to the [1972] effective date of the QTA," *id.* at 286 n.23. But if that limitation period is held subject to tolling, then the government could be forced frequently to defend its ownership of lands long believed to be definitively settled. In this case, for example, the United States has openly acted as owner of Horn Island since 1803, and there had been no attempt on the part of a private party to assert ownership to the disputed lands as against the United States since 1816. Yet now, years later, the court of appeals has held that respondents may challenge the United States' title under the QTA and has directed that title be quieted in respondents.

2. The court of appeals erroneously relied on this Court's decision in *Irwin* v. *Department of Veterans Affairs*, 498 U.S. 89 (1990), for the proposition that the statute of limitations for actions brought under the QTA may be equitably tolled. Pet. App. 10a & n.19. In *Irwin*, this Court held that actions against a federal agency under Title VII of the Civil Rights Act of 1964 are subject to equitable tolling, and stated that "the same rebuttable presumption of equitable tolling applicable to suits against private defendants should also apply to suits against the United States." 498 U.S. at 95-96. *Irwin*, however, involved a federal cause of action that may be brought against private parties as well as federal agencies, and well before *Irwin* the Court had held that the limitation period for bringing suit against a private employer was not jurisdictional but was subject to equitable tolling. See *Zipes* v. *Trans World Airlines, Inc.*, 455 U.S. 385 (1982). The Court concluded in *Irwin* that it would be anomalous to construe the limitations provision as strictly jurisdictional when applied to a federal agency as a defendant, but not when applied to other defendants. See 498 U.S. at 95-96.

No such anomaly arises from applying the statute of limitations strictly in cases under the QTA, whereas anomalies do arise from a holding that the limitation period is subject to equitable tolling. First, the QTA does not provide any mechanism for resolving title disputes among private parties; unlike the statute at issue in *Irwin*, the QTA has no application to defendants other than the United States. Thus, the QTA does not present the anomaly that would have existed in *Irwin* had the case been decided the other way—namely, permitting equitable tolling in suits against private parties but rejecting such tolling in suits based on the same statute brought against a federal agency.

Second, the text of the QTA strongly suggests that Congress did not intend the statute of limitations to be

subject to equitable tolling. Although the Court spoke in *Irwin* of a "rebuttable presumption" favoring the availability of equitable tolling in federal causes of action (p. 27, *supra*), it has also made clear that the courts should not apply a doctrine of equitable tolling when to do so would be fundamentally inconsistent with other aspects of a statutory structure set in place by Congress, including other provisions in the statute of limitations. See *Lampf, Pleva, Lipkind, Prupis & Petigrow* v. *Gilbertson*, 501 U.S. 350, 363 (1991); *United States* v. *Brockamp*, 117 S. Ct. 849, 852 (1997).

Equitable tolling of the QTA's unusually lengthy 12-year limitation period[16] is fundamentally inconsistent with the fact that the QTA's statute of limitations provides that the cause of action accrues only when the plaintiff or his predecessor in interest "knew or should have known of the claim of the United States." 28 U.S.C. 2409a(g). Whereas some limitation periods run from the event giving rise to the cause of action, whether or not the plaintiff was aware of it (see, *e.g.*, *Lampf*, 501 U.S. at 361-363), a plaintiff under the QTA is under an obligation to file suit only once he or his predecessor in interest knows of the government's claim, or reasonably should be aware of the facts giving rise to that claim. The QTA's statute of limitations therefore has an express "discovery rule" that already incorporates equitable considerations. Cf. *Holmberg* v. *Armbrecht*, 327 U.S. 392, 397 (1946); (noting that discovery rule is an equitable doctrine); *Klehr* v. *A.O. Smith Corp.*, 117 S. Ct. 1984, 1992 (1997) (similar).

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[16] That generous time for suit already incorporates equitable considerations, see *Hart* v. *United States*, 585 F.2d 1280, 1284-1285 (5th Cir. 1978), cert. denied, 442 U.S. 941 (1979), and as one judge has observed, "[l]iberal estoppel and tolling, tacked onto a long period of limitations, is double counting." *Cange* v. *Stotler & Co.*, 826 F.2d 581, 599 (7th Cir. 1987) (Easterbrook, J., concurring).

Allegations of misconduct by the government, such as concealment of material facts about the government's claim or misleading statements about the nature of that claim, might be relevant to determining when the plaintiff or his predecessor in interest "knew or should have known of the claim of the United States." But those considerations should not provide a basis for *also* concluding that the limitation period was subject to tolling, even where, as here, the plaintiff concededly did know of the United States' claim. Indeed, respondents' asserted predecessors in interest, the heirs of Catalina Boudreau, knew of the claim of the United States in 1816, when Commissioner Crawford rejected their claim based on the purported Spanish grant, and they then failed to file suit under the special jurisdictional provision Congress enacted in 1844. See p. 3, *supra*. Congress did not intend to revive such stale claims when it enacted the QTA in 1972.[17]

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[17] Even if the 12-year limitation period under the QTA were subject to equitable tolling in some circumstances—and even if the knowledge of respondents' asserted predecessors in interest were put to one side—there would be no basis for tolling here. First, the district court concluded that respondents had failed to move properly to amend their complaint to add a cause of action based on the QTA because they did not move to amend until after both sides had filed dispositive motions. Pet. App. 49a-50a n.1. The district court plainly did not abuse its discretion in relying on that ground to deny the motion to amend. Second, the district court, based on its "careful review of the record," found "little or no evidence to support [respondents'] allegations of fraud, mutual mistake, and so forth," and indeed found that "[t]he United States acted in good faith in the settlement of [the *Adams*] case." *Id.* at 43a. The court of appeals did not disturb that conclusion, but nonetheless ruled that the government may not benefit from the limitation period, in light of what it believed to be the "diligence" displayed by respondents, which (it stated) resulted in their discovering a grant that "apparently not even custodians of the public land records could or would locate." *Id.* at 10a. The court of appeals did not suggest, however, that government attorneys or other personnel were aware of

II. EVEN IF THE DISTRICT COURT HAD JURISDICTION OVER RESPONDENTS' ACTION, THE COURT OF APPEALS ERRED IN QUIETING TITLE IN FAVOR OF RESPONDENTS

A. The Court Of Appeals Erred In Reversing The District Court's Denial Of Respondents' Motion For Summary Judgment Rather Than Remanding The Case To The District Court

Even if the court of appeals' conclusion that the district court had subject-matter jurisdiction over this case were correct, its decision to address the merits of the land dispute *itself*, rather than remand the case to the district court (which had denied respondents' motion for summary judgment), was in error. At a minimum, once the court of appeals reversed the judgment of dismissal, it should have remanded the case to the district court for further proceedings.

1. The jurisdiction of the courts of appeals under 28 U.S.C. 1291 (under which the appeal in this case was taken) is limited to "final decisions" of the district courts. Ordinarily, a decision denying a motion for summary judgment is not final and hence not appealable. See *Johnson* v.

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or intentionally withheld information supporting the validity of a claim by respondents through the Boudreau Grant. In fact, in the *Adams* case, the government cited to the reprint of Commissioner Crawford's report in the *American State Papers*, where there was a reference to such a grant accompanied by an explanation why the grant did not confer title, and a government witness also referred in his deposition to the original of that report in the National Archives. See p. 6, *supra*. Nonetheless, respondents did not retain their expert to search the Archives until 1991, nine years after the consent judgment was entered. That delay is scarcely consistent with "diligence" on respondents' part. Moreover, the *American State Papers* and materials in the National Archives presumably were available to respondents (and their predecessors in interest) prior to the *Adams* litigation.

Jones, 515 U.S. 304 (1995); *Swint* v. *Chambers County Comm'n*, 514 U.S. 35 (1995). In denying a motion for summary judgment, a district court usually does no more than determine that the moving party is *not* entitled to immediate judgment as a matter of law. Such a denial is not an appealable "final decision," for it does not bring an end to the litigation, see *Catlin* v. *United States*, 324 U.S. 229, 233 (1945), nor does it conclusively resolve important matters separable from the merits in a manner that permits immediate appellate review, see *Swint*, 514 U.S. at 41-42.[18]

When a district court denies summary judgment on the ground that the movant has not established that there is no genuine issue of material fact such that it would be entitled to judgment as a matter of law, the court "does not settle or even tentatively decide anything about the merits of the claim. [The denial of summary judgment] is strictly a pretrial order that decides only one thing—that the case should go to trial." *Switzerland Cheese Ass'n* v. *E. Horne's Mkt., Inc.*, 385 U.S. 23, 25 (1966) (holding that such denials of summary judgment may not be appealed under 28 U.S.C. 1292(a)(1)); see also *Swint*, 514 U.S. at 42 (noting that district courts may reconsider denial of summary judgment). In this case, for example, the district court denied respondents' motion for summary judgment once its "careful review of the record ha[d] yielded little or no evidence to support [respondents'] allegations of fraud, mutual mistake, and so forth." Pet. App. 43a. At most,

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[18] There are, of course, well established categorical exceptions to that general rule, as where a defendant to a *Bivens* action or suit brought under 42 U.S.C. 1983 moves for summary judgment based on qualified immunity, and the district court concludes as a matter of law that the defendant's alleged behavior violated clearly established law. See *Johnson*, 515 U.S. at 311-312; *Mitchell* v. *Forsyth*, 472 U.S. 511 (1985). This case does not involve any such exception.

that decision determined that respondents would be required to prove their allegations at a full trial.

The district court's denial of summary judgment did not become reviewable on appeal merely because the district court also entered a judgment of dismissal on jurisdictional grounds. In many cases, of course, a court of appeals may, on appeal from a final judgment, review a district court's pretrial order and reverse the final judgment on the basis that the pretrial order was error, under the theory that the pretrial order was merged into and affected the final judgment. Thus, a court of appeals may reverse a final judgment if it concludes the district court erred in excluding evidence, striking a defense, denying intervention of right, refusing to certify a class action, or disqualifying (or refusing to disqualify) counsel. In those situations, however, the court of appeals reverses the final judgment because it concludes that the erroneous pretrial order caused prejudice to the appealing party in the litigation (or, less frequently, because the erroneous order is of a nature that requires reversal even absent prejudice). In other words, the reversal is based on the reasoning that the erroneous pretrial order produced an erroneous final judgment. See *Stringfellow* v. *Concerned Neighbors in Action*, 480 U.S. 370, 375-376 (1987); *Richardson-Merrell Inc.* v. *Koller*, 472 U.S. 424, 438-439 (1985); *Firestone Tire & Rubber Co.* v. *Risjord*, 449 U.S. 368, 377-378 (1981); *Coopers & Lybrand* v. *Livesay*, 437 U.S. 463, 469 (1978); *United States* v. *MacDonald*, 435 U.S. 850, 859-860 (1978).

In this case, however, the district court's denial of summary judgment did not "produce" its final judgment of dismissal on jurisdictional grounds. Indeed, once it concluded that the case should be dismissed, the district court might well have treated respondents' motion for summary judgment as moot or irrelevant. And the court of appeals

could not have reversed the judgment of dismissal on jurisdictional grounds based on a conclusion that the denial of summary judgment was erroneous. If the district court's ruling on jurisdiction was correct, then respondents' motion for summary judgment was irrelevant on appeal as well. But if the district court's ruling on jurisdiction was incorrect and reversal was proper on that basis, then, once the judgment of dismissal was reversed, there was nothing more for the court of appeals to review. The case was thereby reinstated in the district court at the stage it had achieved at the time the district court dismissed it. At that point, the district court's denial of summary judgment, based on its review of the record at a particular point in the litigation, simply resumed its tentative (and non-appealable) character.[19]

The conclusion that the district court's denial of summary judgment was not reviewable on respondents' appeal

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[19] For lower court rulings to similar effect, see *Reich* v. *ConAgra, Inc.*, 987 F.2d 1357, 1362 n.6 (8th Cir. 1993) (denial of summary judgment not reviewable on appeal from summary judgment for adverse party); *Goodman* v. *McDonnell Douglas Corp.*, 606 F.2d 800, 804 n.11 (8th Cir. 1979) (denial of summary judgment not reviewable on appeal from dismissal for laches), cert. denied, 446 U.S. 913 (1980); *Burke* v. *Ernest W. Hahn, Inc.*, 592 F.2d 542, 546 (9th Cir. 1979) (denial of summary judgment not reviewable on appeal from dismissal for lack of jurisdiction); see also *Foy* v. *Schantz, Schatzman & Aaronson, P.A.*, 108 F.3d 1347, 1350 (11th Cir. 1997) (denial of motion to dismiss for failure to state a claim not reviewable on appeal from dismissal for lack of jurisdiction); *Akin* v. *PAFEC, Ltd.*, 991 F.2d 1550, 1563 (11th Cir. 1993) (denial of jury trial not reviewable on appeal from grant of summary judgment); *Milan Express Co.* v. *Western Surety Co.*, 886 F.2d 783, 785 n.1 (6th Cir. 1989) (denial of class certification not reviewable on appeal from dismissal for lack of jurisdiction); *Weil* v. *Investment/Indicators, Research & Mgmt., Inc.*, 647 F.2d 18, 26 (9th Cir. 1981) (denial of class certification not reviewable after reversal of judgment of dismissal).

in this case is consistent with this Court's strict yet practical approach to the final judgment rule. Permitting appellate review of such a denial does not advance society's and litigants' interest in an efficient judicial system. To the contrary, as the Court observed in *Stringfellow*, *supra*, with regard to the policy against pretrial appeals, premature appeals "burden appellate courts by requiring immediate consideration of issues that may become moot or irrelevant by the end of trial." 480 U.S. at 380. That point is well taken in this case, for even if the court of appeals correctly concluded that the district court had subject-matter jurisdiction over the action, the district court might have concluded on remand (as we argue below, pp. 37-42, *infra*), that respondents' claim failed as a matter of law because of this Court's controlling precedent, and the court of appeals might have agreed on a later appeal. Thus, neither court might have had to consider whether respondents were entitled to summary judgment on their claims of fraud and mutual mistake.

Furthermore, the courts of appeals are not institutionally better suited than district courts to review a summary judgment record. "[T]he issue here at stake—the existence, or nonexistence, of a triable issue of fact—is the kind of issue that trial judges, not appellate judges, confront almost daily." *Johnson* v. *Jones*, 515 U.S. at 316. A rule requiring, or even routinely permitting, appellate courts to pore over a record to decide whether the district court erred in denying summary judgment would lead to greater delay, when the parties' and courts' resources would be better expended in advancing towards the ultimate resolution of the case. See *ibid.*

2. Some courts have stated that, when the facts are not contested and the dispute between the parties involves only issues of law, then a court of appeals, after announcing the proper rule of law and reversing a final judgment

based on the application of an erroneous legal rule by the district court, may direct entry of summary judgment for the appellant.[20] That practice may be viewed as an exercise of discretionary pendent appellate jurisdiction. Cf. *Swint*, 514 U.S. at 50-51. Thus, when the case is "a simple one with simple facts," *First Nat'l Bank* v. *Lincoln Nat'l Life Ins. Co.*, 824 F.2d 277, 281 (3d Cir. 1987), the court of appeals may have discretionary authority to review an order denying summary judgment when the appeal of that denial involves purely legal issues that are the same as, or closely related to, the legal questions at issue on the appeal from the district court's grant of summary judgment for the appellee.

This, however, is manifestly not a case in which the court of appeals' exercise of discretionary pendent appellate jurisdiction was proper. The district court denied respondents' motion for summary judgment without reaching the merits of their claim of title, in light of its decision to dismiss the case. See Pet. App. 44a. The district court thus had no occasion to address numerous issues of fact and law governing respondents' motion for summary judgment on their claim to set aside the prior judgment, much less any contentions that title should be quieted in them. The district court also concluded that respondents had failed to bring forward evidence of fraud or mutual mistake that would justify reopening the *Adams* judgment. *Id.* at 43a. Yet the court of appeals ordered that title be awarded to respondents based on its

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[20] See, *e.g.*, *Swaback* v. *American Info. Technologies Corp.*, 103 F.3d 535, 543-544 & n.24 (7th Cir. 1996); *National Fire Ins.* v. *Bartolazo*, 27 F.3d 518, 518 (11th Cir. 1994); *Jones-Hamilton Co.* v. *Beazer Materials & Servs., Inc.*, 973 F.2d 688, 693-694 & n.2 (9th Cir. 1992); *Sacred Heart Med. Ctr.* v. *Sullivan*, 958 F.2d 537, 543 (3d Cir. 1992); *Tabacalera Severiano Jorge, S.A.* v. *Standard Cigar Co.*, 392 F.2d 706, 716 (5th Cir.), cert. denied, 393 U.S. 924 (1968).

conclusion that "the validity of [respondents'] title is a legal certainty." *Id.* at 9a.

The court of appeals' disposition of this case necessarily rested on the following premises: (a) respondents had established that there was no genuine factual dispute as to whether the government had engaged in "misrepresentation" (Pet. App. 8a) or "active[] misle[ading]" (*id.* at 10a); (b) Professor Baade's affidavit provided irrefutable and undisputed "evidence" of the validity of the Boudreau Grant (*id.* at 8a); (c) respondents had shown a chain of title between Boudreau and themselves; and (d) the title respondents claim had not been lost through abandonment or adverse possession. All those premises are incorrect.

First, the district court had concluded that respondents had produced "little or no evidence" of misconduct on the part of the United States (Pet. App. 43a); given that ruling, the court of appeals plainly abused its discretion in not remanding the case to the district court, at least for a reexamination whether the facts of this case supported an independent action in equity or equitable tolling under the QTA. Second, while the court of appeals relied on Professor Baade's "Memorandum on Title to Horn Island" for its conclusion that the record established Galvez's authority to grant Horn Island to Boudreau, Baade's memorandum stated only his *legal* opinion (J.A. 114, 185) and did not demonstrate the absence of a genuine issue of material *fact* as to the validity of the Boudreau Grant. While Federal Rule of Civil Procedure 56(e) permits a court to rely on unchallenged "facts as would be admissible in evidence," it does not permit a court to give dispositive weight to *legal conclusions* in an affidavit.[21] And third, neither the Baade

[21] Rule 56(e) requires that affidavits in support of motions for summary judgment "shall be made on personal knowledge," and also requires an affirmative showing that the affiant "is competent to testify to the matters stated therein." Legal conclusions, therefore, are not within the scope of affidavits offered under Rule 56. See 10A C. Wright et al., *Federal Practice and Procedure* § 2738, at 486-489 (2d ed. 1983).

affidavit nor any other filing in the record established the requisite chain of title or addressed why respondents had not lost whatever interest they might have had through abandonment or adverse possession. Accordingly, the court of appeals' reversal of the denial of summary judgment was error.

B. The Court Of Appeals' Decision On The Merits To Quiet Title In Favor Of Respondents Was Error In Light Of This Court's Decision In *United States* v. *Power's Heirs*

Finally, even if the court of appeals had appellate jurisdiction to review the district court's denial of respondents' motion for summary judgment, its decision on the merits to reverse that denial and to order that title be quieted in favor of respondents was substantively in error. That decision—which rested on the erroneous premise that "the Boudreau Grant was complete and valid under the Spanish law of 1781" (Pet. App. 8a)—conflicts with this Court's decision in *United States* v. *Power's Heirs*, 52 U.S. (11 How.) 570 (1851), which compels the conclusion that the Boudreau Grant would *not* have been valid when it was purportedly made.

1. *Power's Heirs* involved a claim by private parties against the United States to ownership of Deer Island and Ship Island, Mississippi. Those islands neighbor Horn Island and are also within the territory ceded by Britain to Spain in 1783 and later obtained by the United States in the Louisiana Purchase. The claimants in *Power's Heirs* contended that their predecessor in interest had received the islands pursuant to a grant from Galvez on August 1,

1781, the same date as that of the Boudreau Grant. They therefore argued, as respondents argue now, that the islands were held in private ownership before the Louisiana Purchase and therefore did not become part of the public domain in 1803.

This Court rejected that claim, on the basis that Galvez lacked authority to make such a grant on August 1, 1781. 52 U.S. (11 How.) at 577-580. The Court began its analysis from the background principle that, "[b]y the laws of nations, in all cases of conquest, * * * the rule is, that laws, usages, and municipal regulations in force at the time of the conquest remain in force until changed by the new sovereign." *Id.* at 577. The Court then reviewed the history of West Florida to determine if Spain had changed the "laws of property" in West Florida, "by virtue of which the public domain could be granted to private owners," before August 1, 1781. *Id.* at 577-578. The Court noted that the British forces in Pensacola surrendered West Florida to Spain on May 9, 1781, before the grant in question; it also observed that the 1783 peace treaty between Britain and Spain provided that "his Britannic Majesty will cede to his Catholic Majesty [of Spain] East Florida, and his said Catholic Majesty will retain West Florida." *Id.* at 579. Nonetheless, the Court found nothing in the history of West Florida during that period "indicating that the Spanish laws had been introduced into Florida [as of August 1, 1781], and superseded those of England, and that civil power had been vested in Galvez to grant lands." *Ibid.* The Court therefore concluded that the purported grant by Galvez had "no force." *Id.* at 580.[22]

[22] The Court also observed that, in the purported grant relied on by the claimants in *Power's Heirs*, Galvez supposedly granted the islands under his commission as Governor of Louisiana; but since that commission had not been extended to include civil authority over West Florida, the Court concluded that Galvez exercised only military authority over West Florida. Because Galvez was merely "a military officer in command" who did not have the power to grant lands in West Florida, the Court concluded that the supposed grant was void. 52 U.S. (11 How.) at 580.

Power's Heirs holds that Galvez had no legal authority to grant public lands in West Florida to private parties on August 1, 1781, the very date of the Boudreau Grant; it therefore compels the conclusion that respondents' claim, which rests on the premise that Galvez did have such authority, is invalid. *Power's Heirs* was consistent with principles of international law governing the transfer of sovereignty from one state to another by conquest, as reflected in both judicial decisions of this country and leading treatises. Under those principles, mere military occupation of territory does not transfer legal sovereignty of the territory to the conqueror; such a transfer may be effected only by a treaty of peace formally ceding the territory, or by a formal instrument of annexation issued by the conquering state after military resistance in the area ceases. See *Power's Heirs*, 52 U.S. (11 How.) at 579 (noting that "[a]t the date of the grant, Spain held in military occupation the country to the east of the island of Orleans, * * * liable to be divested by reconquest or surrender by a treaty of peace"). As Chief Justice Marshall explained in *American Insurance Co.* v. *Canter*, 26 U.S. (1 Pet.) 511, 541 (1828), "[t]he usage of the world is, if a nation be not entirely subdued, to consider the holding of conquered territory as a mere military occupation, until its fate shall be determined at the treaty of peace." Similarly, Justice Story, as Circuit Justice, explained in a case arising out of the occupation of Castine, Maine, by British forces during the War of 1812:

> The right which existed [in Britain during the occupation of Castine] was the mere right of superior force, the allegiance was temporary, and the possession not that firm possession, which gives to the conqueror *plenum dominium et utile*, the complete and perfect ownership of property. It could only be by a renunciation in a treaty of peace, or by possession so long and permanent, as should afford conclusive proof, that the territory was altogether abandoned by its sovereign, or had been irretrievably subdued, that it could be considered as incorporated into the dominions of the British sovereign.

United States v. *Hayward*, 26 F. Cas. 240, 246 (C.C.D. Mass. 1815) (No. 15,336). And just one year before *Power's Heirs*, this Court followed those principles to conclude that the United States' military occupation of Tampico, Mexico, during the Mexican War did not change Tampico's status as a port of a "foreign country" (such that imports therefrom were subject to duty), because "[t]he power of the President under which Tampico * * * [was] conquered and held in subjection was simply that of a military commander prosecuting a war waged against a public enemy." *Fleming* v. *Page*, 50 U.S. (9 How.) 603, 615 (1850). See also *De Lima* v. *Bidwell*, 182 U.S. 1, 183-184, 194 (1901); *United States* v. *Huckabee*, 83 U.S. (16 Wall.) 414, 434 (1873).

Leading treatise writers held similarly that military occupation of territory does not effect a change in legal sovereignty, without a formal cession or annexation of the territory. Grotius wrote that "territory is not considered as captured at the moment it is occupied," and that mere occupation "is not sufficient for that effect which we are discussing [*i.e.*, the right to acquire captured territory], for which secure possession is required." 2 H. Grotius, *De*

Jure Belli Ac Pacis 667 (F. Kelsey trans., 1925). Vattel suggested that "it is only by the treaty of peace, or by the entire subjection and extinction of the State to which [occupied] towns and provinces belong, that the acquisition is completed and the ownership rendered permanent and absolute. A third party can not, therefore, obtain secure possession of a conquered town or province until the sovereign from whom it has been taken has either renounced it by the treaty of peace or lost his sovereignty over it by final and absolute submission to the conqueror." 3 E. de Vattel, *The Law of Nations* 308-309 (C. Fenwick trans., 1916).[23] Chancellor Kent expressed a similar view shortly

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[23] In discussing the "rule of postliminium"—which holds that territory conquered by one state during war and then recovered by its original sovereign in the peace treaty or upon recapture returns to its *status quo ante bellum*—Vattel noted that one who acquires property from a conqueror that has not obtained perfect title does so on the implicit risk that he will be ousted if the territory is recaptured by the original sovereign or returned to it in a peace treaty. 3 E. de Vattel, *supra*, at 315. Vattel then went on to state, however, that "if that town has been ceded to the enemy by a treaty of peace * * * then the rule of *postliminium* no longer operates in its favor, and the alienation of its property by the conqueror is valid and irrevocable." *Ibid.* See also 1 J. Kent, *Commentaries on American Law* 110 (3d ed. 1836) (relying on Vattel for principle that "if the real property * * * be ceded to the conqueror by the treaty of peace, the right of postliminy is gone forever, and a previous alienation by the conqueror would be valid").

It is not clear whether Vattel meant that such an alienation by a conqueror before a peace treaty would be valid under international law as against objection by a state, or whether a private grantee would necessarily have a valid claim as a matter of municipal law to land obtained from the conquering sovereign after its military occupation but before the peace treaty. In any event, this Court in *Power's Heirs* was aware that West Florida, including Deer and Ship Islands, was definitively recognized as Spanish territory by the 1783 peace treaty between Spain and Britain, see 52 U.S. (11 How.) at 579, yet it did not

before *Power's Heirs* was decided, see 1 J. Kent, *Commentaries On American Law* 110, 177 (3d ed. 1836), as have modern commentators.[24]

2. Under *Power's Heirs* and accordant authority, therefore, Galvez lacked authority to grant Horn Island to Boudreau on August 1, 1781, because Spanish civil law had not been extended over the territory; Spain at the time exercised merely occupying power over the area and had neither received Horn Island in a treaty of peace nor formally annexed Horn Island. Respondents raise several

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treat that peace treaty as having validated any grants made by Galvez during the military occupation and before the treaty. Accordingly, *Power's Heirs* stands for the proposition that grants to lands in West Florida by Galvez on August 1, 1781, were invalid because they were not authorized by Spanish law at that time, and were not retroactively revived by the 1783 peace treaty.

[24] Lauterpacht, for example, stated that "[c]onquest alone does not *ipso facto* make the conquering State the sovereign of the conquered territory. * * * Conquest is only a mode of acquisition if the conqueror, after having firmly established the conquest, formally annexes the territory. * * * Conquered enemy territory, although actually in possession and under the sway of the conqueror, remains legally under the sovereignty of the enemy until through annexation it comes under the sovereignty of the conqueror." 1 L. Oppenheim, *International Law* 518-519 (H. Lauterpacht ed., 7th ed. 1948). In summarizing modern writings on the subject, Whiteman observed that "[t]itle by conquest is viewed as contingent upon the completion of a twofold process: *debellatio* plus subjugation traditionally exercised through annexation." 2 M. Whiteman, *Digest of International Law* 1111 (1963). Under Anglo-American approaches to the issue, "the objective fact (conquest) must be coupled with the subjective animus of annexing the conquered enemy state. * * * Conquest is the taking of possession of the territory of an enemy state by force; it becomes . . . transfer of sovereignty only if the conquered territory is effectively reduced to possession *and annexed* by the conquering state." 2 *id.* at 1113 (emphasis added; internal quotation marks omitted); see also 2 *id.* at 1123.

arguments why *Power's Heirs* should not be followed. Br. in Opp. 17-21. Those submissions, however, provide no basis for this Court to disregard its customary practice of *stare decisis* and to overrule *Power's Heirs*. See generally *Patterson* v. *McLean Credit Union*, 491 U.S. 164, 172-173 (1989) (emphasizing that "any departure from the doctrine of *stare decisis* demands special justification").

First, respondents argue that new historical evidence unavailable to the Court at the time of the *Power's Heirs* decision demonstrates that Galvez had in fact been granted civil authority in West Florida by August 1, 1781, and that Galvez therefore had the legal power to make the Boudreau Grant and similar grants. Respondents rely on an Order of the King of Spain of February 12, 1781, informing Galvez that, "for the present, and while you govern Mobile and Louisiana, their administration shall be independent of the Captaincy General of the Island of Cuba, and that Pensacola and its district shall be added to your jurisdiction as soon as they are occupied by the forces of the King."[25] See Br. in Opp. 17-18; J.A. 132. That Order, however, does not purport to be an *annexation* of West Florida, which would have been required for an assumption of sovereignty by Spain, and such an annexation would have been unlikely on February 12, 1781, when there was still British resistance in the area. See p. 38, *supra*. Nor does the Order purport to introduce Spanish *laws* into West Florida, which was required at a minimum to vest in Galvez the civil power to grant lands, see *Power's Heirs*, 52 U.S. (11 How.) at 579.

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[25] The original of the Order appears to be in the National Archives of Cuba. A translation of the Order is set forth in D. Corbitt, *The Administrative System in the Floridas, 1781-1821*, 1 *Tequesta* No. 2, 41, 42 (Aug. 1942). We have lodged copies of the *Tequesta* article with the Clerk.

Rather, the import of the Order was to permit Galvez to administer the conquered territories free of interference from Spanish colonial authorities in Havana. There was, of course, a necessity for the Spanish to vest the power to administer the conquered territories in *someone*, even before they were formally annexed or ceded. Under international law, the Spanish had the authority to administer the region until the status of the territories was definitively settled.[26] But the fact that the Spanish moved to establish a regular administration of the territories "for the present" (p. 43, *supra*), before a treaty of peace, does not establish that Galvez was then granted authority to make grants of sovereign lands in West Florida.[27]

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[26] Cf. *Dooley* v. *United States*, 182 U.S. 222, 230-231 (1901) (upholding tariffs on goods imported from Puerto Rico during its military occupation by American forces and until its formal cession by Spain, under President's power as Commander-in-Chief and principles of international law); *Neely* v. *Henkel*, 180 U.S. 109, 120-125 (1901) (similar; discussing and upholding U.S. administration of Cuba after military occupation of island); *Cross* v. *Harrison*, 57 U.S. (16 How.) 164, 189-191 (1854) (upholding tariffs imposed by military governor of California between military conquest and receipt of notification of ratification of peace treaty with Mexico).

[27] Respondents' reliance on the promulgation of the Kearny Code in New Mexico in 1846 (Br. in Opp. 20) is therefore wide of the mark. Although General Kearny promulgated a legal code for the administration of New Mexico quickly after that territory was captured in the Mexican War, the Kearny Code was not an instrument of annexation of New Mexico by the United States, nor did it purport to extend to New Mexico Congress's sovereign authority to grant public lands. Rather, the Kearny Code was promulgated as an interim measure for the administration of a territory under military occupation, as President Polk observed in his 1847 annual message to Congress. See 4 *A Compilation of the Messages and Papers of the Presidents* 494 (J. Richardson ed., 1897). New Mexico became part of the sovereign territory of the United States only upon the 1848 peace treaty with Mexico, as that treaty recognized in several places, and the United States returned to Mexico other lands that had come under American military occupation during the war. See Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico, Feb. 2, 1848, 9 Stat. 924-925 (providing for evacuation of U.S. forces from Mexican territory), 926 (setting new boundary line), 929 (granting right of U.S. citizenship to Mexicans "now established in territories previously belonging to Mexico, and which remain in the future within the limits of the United States"), 932 (payment to Mexico "[i]n consideration of the extension acquired by the boundaries of the United States" under the treaty).

Second, respondents stress (Br. in Opp. 19) that the 1783 peace treaty between Britain and Spain provided that Spain would "retain" West Florida. That point, however, was known to the Court in *Power's Heirs*, see 52 U.S. (11 How.) at 579, and yet the Court did not find it significant. The treaty negotiators may have adopted the term "retain" simply to reflect the fact that Spanish forces already occupied West Florida. The true significance of the language of the 1783 treaty would likely have been more evident to the *Power's Heirs* Court than it is to today's litigants, who are almost 150 years farther away from the treaty. Thus, the already-addressed phrasing of the 1783 treaty is not a "special justification" warranting the overruling of *Power's Heirs*.

Third, respondents have relied on scattered historical incidents to argue that the Spanish Governors of Louisiana had the power to make, and did make, land grants in West Florida. The cited materials, however, do not prove the validity of Spanish grants in West Florida made before the peace treaty of 1783. *Murdock* v. *Gurley*, 5 Rob. 457 (La. 1843), cited by Professor Baade (J.A. 131), involved a land claim based on actions of the Spanish governors in 1788 and 1800, after the peace treaty. See 5 Rob. at 459-460, 463-466. Professor Baade also relied (J.A. 131) on an 1822 report of Don Vincente Pintado, the former Spanish

Surveyor General of West Florida, in which that official explained that he was unable to find records in Cuba of early Spanish land grants in Florida because, before 1798, the power to grant lands was held by the Governor of Louisiana, independent of authorities in Cuba. Although that report does state in passing that the Spanish Governor of Louisiana had authority to make land grants in West Florida "since it had been conquered by the Spanish arms upon the British, and their possession had been confirmed by [the 1783 peace treaty]," the report does not purport to address the precise question at issue here —whether grants made *before* the 1783 treaty were valid —and the thrust of Pintado's report was that he had no access to evidence of such grants. See 2 *A New Collection of Laws, Charters and Local Ordinances of the Governments of Great Britain, France, and Spain Relating to the Concessions of Land in their Respective Colonies* 339 (J. White ed., 1839).

Finally, respondents urge that our reading of *Power's Heirs* "casts doubt on all unconfirmed but complete" Spanish grants made in the West Florida area before the 1783 peace treaty. Br. in Opp. 20-21. In fact, it is respondent's argument that *Power's Heirs* should not be followed that threatens disruption of established land titles in the area. This Court has cautioned that considerations favoring *stare decisis* are "at their acme in cases involving property and contract rights, where reliance interests are involved." *Payne* v. *Tennessee*, 501 U.S. 808, 828 (1991); see also cases cited at p. 24, *supra*. To overrule *Power's Heirs* now could call into question many land titles in the West Florida area by reviving the possibility of claims to land being asserted on the basis of grants long thought to be invalid—including the purported grant at issue in *Power's Heirs* itself, and other purported grants by Galvez and Grimarest in 1781-1783 that were rejected

by Commissioner Crawford. See 3 *American State Papers, Public Lands*, *supra*, at 14-16, items 1, 3, 78.

3. Even if the Court were to conclude that *Power's Heirs* should not be followed, the court of appeals nonetheless erred in quieting title in favor of respondents, for there are numerous other factual and legal obstacles to respondents' claim. First, respondents have not established a chain of title between themselves and Boudreau. Even if the Boudreau Grant were valid in all respects, respondents would not be entitled to quiet title in the absence of establishing such a chain of title.

Second, respondents have failed to show that Catalina Boudreau fulfilled the conditions under Spanish law that were essential to establishing the Boudreau Grant as a valid and complete grant. At the relevant time, land grants in Spanish Louisiana were governed by the Regulations of Governor O'Reilly, dated February 18, 1770. See 4 *American State Papers, Public Lands* 3-4 (1859); *Power's Heirs*, 52 U.S. at 577; *Muse* v. *Arlington Hotel Co.*, 68 F. 637 (C.C.E.D. Ark. 1895). Those regulations included formal requirements of "an actual survey on the ground before the title of the crown was divested, followed by an actual putting the grantee in pedal possession; a proceeding which was the equivalent of delivery of seisin at common law." *Id.* at 640. Compliance with those regulations "was essential to enable [the claimant] to procure from the proper Spanish authority a complete title." *Id.* at 642; see also *United States* v. *Hughes*, 54 U.S. (13 How.) 1, 2 (1852); *United States* v. *Moore*, 53 U.S. (12 How.) 209, 222 (1852). Respondents have provided no evidence that Boudreau met those or several other legal conditions of a Spanish grant.

Thus, respondents have at most a claim based on an "incomplete grant" that, under certain conditions set forth by Congress (such as actual settlement of the land), might be

recognized as entitled to equitable recognition. Cf. *Power's Heirs*, 52 U.S. (11 How.) at 580. Congress in 1844 expressly permitted persons with claims to lands east of the Pearl River based on incomplete grants to present their claims for confirmation to a district court, with a right of appeal to this Court. See p. 3, *supra*. But in *United States* v. *Porche*, 53 U.S. (12 How.) 426, 432 (1852), this Court ruled that the 1844 Act established a jurisdictional bar against any action filed in any court after June 17, 1846, in relation to claims that such an incomplete grant was valid. Respondents are thus jurisdictionally barred from asserting the validity of a claim based on an incomplete grant 150 years after the statutory deadline.

Finally, respondents' claims should be deemed abandoned or barred by the United States' adverse possession. A land claim based on an alleged foreign grant is to be considered abandoned where, as here, there has been a great lapse of time before it is asserted. See *Hughes*, *supra*; *Moore*, *supra*; *Fuentes* v. *United States*, 63 U.S. (22 How.) 443, 460 (1860); *United States* v. *Repentigny*, 72 U.S. (5 Wall.) 211, 268 (1867). There is no evidence that respondents' supposed predecessors in interest, Boudreau's heirs, made any effort to assert a claim based on the 1781 Grant after its rejection in 1816 by Commissioner Crawford. Nor is there any evidence that the Boudreaus took actual possession of Horn Island adverse to other claimants; to the contrary, Crawford found that Horn Island had not been inhabited or cultivated. See p. 6, *supra*. And as noted above (p. 4, *supra*), the United States has long and openly exercised ownership rights over the disputed lands; it has thereby obtained them by adverse possession. See *Stanley* v. *Schwalby*, 147 U.S. 508, 519 (1893); *United States* v. *Stubbs*, 776 F.2d 1472, 1476 (10th Cir. 1985); *United States* v. *Stanton*, 495 F.2d 515, 517-518 (5th Cir. 1974). Accordingly, even if the jurisdictional and other

obstacles to further proceedings in this case could be overcome, respondents' claim should be dismissed on the merits.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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APPENDIX

1. Rule 60(b) of the Federal Rules of Civil Procedure provides:

> **(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.** On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., § 1655, or to set aside a judgment for fraud upon the court. Writs of co-

ram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

2. Section 2409a of Title 28, United States Code, provides in pertinent part:

§ 2409a. Real property quite title actions

(a) The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. * * *

(b) The United States shall not be disturbed in possession or control of any real property involved in any action under this section pending a final judgment or decree, the conclusion of any appeal therefrom, and sixty days; and if the final determination shall be adverse to the United States, the United States nevertheless may retain such possession or control of the real property or of any part thereof as it may elect, upon payment to the person determined to be entitled thereto of an amount which upon such election the district court in the same action shall determine to be just compensation for such possession or control.

* * * * *

(g) Any civil action under this section, except for an action brought by a State, shall be barred unless it is commenced with twelve years of the

date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States.

3. Section 1291 of Title 28, United States Code, provides:

§ 1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.